

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

THE ESTATE OF LAURA RATLEY, <i>et</i>)	
<i>al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. CIV-19-265-PRW
)	
DHAFFER M. AWAD and SHAMROCK)	
FOODS COMPANY, an Arizona limited)	
liability company,)	
)	
Defendants.)	

FINAL PRETRIAL REPORT

All counsel who will appear at trial:

Appearing for Plaintiffs:

Michael D. Denton, Jr., OBA #13939
DENTON LAW FIRM
925 West State Highway 152
Mustang, OK 73064
Telephone: (405) 376-2212
Facsimile: (405) 376-2262
michael@dentonlawfirm.com
ATTORNEY FOR PLAINTIFF
RYAN FULCHER

Matthew L. Bretz
BRETZ INJURY LAW
3 Compound Drive
P.O. Box 1782
Hutchinson, KS 67504-1782
Telephone: (620) 662-3435
Facsimile: (620) 662-3445
Matt@bretzinjurylaw.com
ATTORNEY FOR PLAINTIFFS
THE ESTATE OF LAURA RATLEY
AND LEAH RATLEY

James V. Murray, OBA #11448
311 South Duck Street, P.O. Box 2224
Stillwater, OK 74076-2224
Telephone: (405) 377-7000
Facsimile: (405) 377-7009
jvm@jvmlaw.com
ATTORNEY FOR PLAINTIFF
ESTATE OF REBECCA FULCHER

Appearing for Defendants:

James E. Weger, OBA #9347
Patrick G. Colvin, OBA #31519
JONES, GOTCHER & BOGAN, P.C.
3800 First Place Tower
15 East Fifth Street
Tulsa, Oklahoma 74103-4309
Telephone: (918) 581-8200
Facsimile: (918) 583-1189
ATTORNEYS FOR DEFENDANT
SHAMROCK FOODS COMPANY

J. Christopher Davis, OBA #16639
Jonathan D. Cartledge, OBA #19062
Brian Self, OBA #33263
CROWE & DUNLEVY
A Professional Corporation
222 N Detroit Ave., Suite 600
Tulsa, Oklahoma 74120
Telephone: (918) 592-9800
Facsimile: (918) 592-9801
ATTORNEYS FOR DEFENDANT
DHAIFER AWAD

Jury Trial Demanded ☒ **Non-Jury Trial** ☐

1. **BRIEF PRELIMINARY STATEMENT.** State briefly and in ordinary language the facts and positions of the parties (appropriate for use during jury selection in jury cases).

Plaintiffs' Position: Plaintiffs bring this lawsuit arising from a tragic crash claimed two young lives which occurred on April 5, 2017, on the Cimarron Turnpike just north of Stillwater, OK. The crash occurred when Plaintiff Ryan Fulcher became drowsy when driving home with three passengers in the van, drifted off the shoulder, ran across the rumble strips which woke him and then he steered back on the road. However, before he could get back on the road there was a semi-tractor trailer parked in front of him on the shoulder and on top of the rumble strips, and when Ryan Fulcher steered to the left he did not clear the trailer, cutting his van in half and killing the two passengers on the passenger side of the van.

Plaintiffs sued the driver of the semi (Defendant Awad) claiming that he, in the course and scope of his employment with Defendant Shamrock, negligently operated his semi-tractor and trailer by violating his legal time to operate a commercial motor vehicle on the roads of Oklahoma (called Hours of Service) and further by parking on the shoulder of the Cimmaron Turnpike outside Stillwater, Oklahoma directly on top of the rumble strips for 5 hours, without putting out his warning triangles and without having his flashing hazard lights activated, all without having an emergency. Plaintiffs contend there were numerous other locations off the roadway where Defendant Awad could have parked his semi away from the 75 mph traffic and without blocking the rumble strips, but Defendant Awad chose to try and get as many miles in driving as he could under the Hours of Service rules, causing him to pull onto the shoulder of the 75 mph turnpike with only 30 seconds of time left for him to drive according to his electronic logging device.

Plaintiffs further sued Defendant Shamrock claiming that it negligently entrusted Defendant Awad with a semi-tractor and trailer because of Defendant Awad's numerous violations of various traffic laws, rules and regulations while driving on behalf of Defendant Shamrock. Additionally, Defendant Shamrock aided and abetted Defendant Awad in falsifying his driver's logs so it could benefit from Defendant Awad driving over the legal limit of hours.

Defendants' Position: This action arises from a motor vehicle collision which occurred on the Cimarron Turnpike (Highway 412) on April 5, 2017, at approximately 1:30 A.M. At that time a semi owned by Shamrock Foods Company ("Shamrock"), and being operated by Dhafer Awad, was parked on the shoulder of the road, completely outside the lane of travel. Ryan Fulcher was driving a vehicle with passengers Laura Ratley, Leah Ratley and Rebecca Fulcher. Ryan Fulcher fell asleep and drove into the rear of the parked tractor trailer.

Defendants deny that the semi was dangerously or illegally parked. Defendants deny that Awad was negligent. Defendants allege Ryan Fulcher's negligence was the proximate cause of the injuries suffered by Plaintiffs. Ryan Fulcher was charged with, and pled no contest to, negligent homicide for reckless disregard for the safety of others resulting in death. Plaintiffs' negligence is comparatively greater than Defendants' negligence, if any; therefore, Plaintiffs' recovery should be barred or reduced. Further, Defendants contend that Defendant Shamrock cannot be found liable for negligent entrustment because Defendant Awad's actions and/or omissions were not the proximate cause of the accident.

2. JURISDICTION. State the basis on which the jurisdiction of the court is invoked.

Diversity jurisdiction is invoked pursuant to 28 U.S.C. § 1332. The Ratley plaintiffs are all residents and citizens of the State of Kansas. At all relevant times, the Fulcher plaintiffs were residents and citizens of the State of Kansas. Defendant Awad is a resident and citizen of the State of California. Defendant Shamrock is an Arizona limited liability company with its principal place of business in Arizona. The parties agree that there is complete diversity of citizenship and that the amount in controversy exceeds the sum of \$75,000.00 between each plaintiff and the Defendants.

STIPULATED FACTS. List stipulations as to all facts that are not disputed, including jurisdictional facts.

- A. Robert Ratley and John and Amy Fulcher are the proper persons to bring claims of wrongful death on behalf of the Decedents as well as their own losses.
- B. Shamrock employed Awad as a driver. Awad had been entrusted with a Shamrock tractor and trailer prior to the accident.
- C. Awad was acting in the course and scope of his employment with Shamrock at the time of the accident.
- D. Awad had a valid commercial driver's license at the time of the accident.
- E. On April 4, 2017, Awad parked a tractor and trailer on the westbound shoulder of the Cimarron Turnpike (Highway 412) at or near the mile marker #7 in Noble County, State of Oklahoma, and no part of the vehicle remained in the traveled portion of the roadway.

- F. Approximately five hours after Awad parked, the van driven by Ryan Fulcher drifted outside the Turnpike's travel lanes, contacted the rumble strips on the shoulder and then collided with the back of the tractor-trailer parked on the shoulder.
 - G. At the time of the collision, neither Ryan Fulcher nor Awad were under the influence of any drugs or alcohol.
 - H. The Turnpike was straight and level (i.e., flat) around the area of impact.
 - I. The rear of the trailer parked by Awad was marked with reflective conspicuity tape.
 - J. Before the collision, Ryan Fulcher was drowsy and trying to stay awake.
 - K. Ryan Fulcher only had 7 more miles to drive before he was to switch drivers with another person in the minivan.
 - L. Laura Ratley and Rebecca Fulcher were asleep immediately before the van impacted the tractor-trailer.
 - M. Laura Ratley and Rebecca Fulcher died immediately upon the van's impact with the tractor-trailer.
 - N. The accident occurred in Noble County, Oklahoma on April 5, 2017.
3. LEGAL ISSUES. State separately, and by party, each disputed legal issue and the authority relied upon.

Plaintiffs:

- A. Is the no contest plea of Ryan Fulcher to the misdemeanor crime of Negligent Homicide-Motor Vehicle (two counts) admissible for any purpose? FRE 410 and see Plaintiffs' Motion in Limine and Response to Defendants' Motions for Summary Judgment.
- B. Have Plaintiffs established adequate facts to support the independent negligence claim of negligent entrustment against Defendant Shamrock? *Fox v. Mize*, 2018 OK 75, 428 P.3d 314; *Boyd Rosene & Assocs., Inc. v. Kansas Mun. Gas Agency*, 174 F.3d 1115, 1118 (10th Cir. 1999); *Stalnaker v. Three Brothers Transport, LLC*, 4:20-CV-00140-JED-CDL Doc. 30 (N.D. Okla. Jan. 31, 2022), citing *Blanke v. Alexander*, 152 F.3d 1224, 1228 (10th Cir. 1998).

- C. Is Defendant Shamrock entitled to offer evidence as to the results of its investigation into the subject crash since it has claimed attorney client privilege and/or attorney work product over the same? *Lindley v. Life Invs. Ins. Co. of Am.*, 267 F.R.D. 382, 392–93 (N.D. Okla. 2010), *aff'd in part as modified*, No. 08-CV-0379-CVE-PJC, 2010 WL 1741407 (N.D. Okla. Apr. 28, 2010); *Frontier Refining, Inc. v. Gorman–Rupp Co., Inc.*, 136 F.3d 695, 704 (10th Cir.1998); *Chevron Corp. v. Stratus Consulting, Inc.*, 2010 WL 3923092, *10 (D.Colo.2010)
- D. Are Plaintiffs entitled to a Spoliation Instruction due to Defendant Shamrock's failure to preserve and produce the detailed information available to it from the Omnitracs ELD software installed on Awad's semi-tractor? *Turner v. Public Service Co. of Colorado*, 563 F.3d 1136, 1149 (10th Cir. 2009), *citing Burlington N. & Santa Fe Ry. Co. v. Grant*, 505 F.3d 1013, 1032 (10th Cir. 2007); *Loyd v. Salazar*, 2021 WL 3042663 (W.D.Okla.2021); *Koch v. Koch Industries, Inc.*, 197 F.R.D. 488, 490 (N.D.Okla.1999; *Aramburu v. Boeing Co.*, 112 F.3d 1398, 1407 (10th Cir.1997); *Henning v. Union Pac. R.R. Co.*, 530 F.3d 1206, 1220 (10th Cir.2008); *Patten v. Target Corp.*, 2009 WL 1279331, *3 (D.Colo.2009) (unpublished opinion); *Genova v. Banner Health*, 2012 WL 2340122 (D.Colo.2012); *Burlington Northern & Santa Fe Rwy Co. v. Grant*, 505 F.3d 1013, 1032–33 (10th Cir.2007).¹

Defendants:

Currently the following motions are pending before the Court:

- Defendants' Joint Motion to Exclude Plaintiffs' Designated Expert William Reece and Brief in Support (Doc. 263)
- Defendants' Joint Motion to Exclude Plaintiffs' Designated Expert Stephanie Wick and Brief in Support (Doc. 264)
- Defendants' Joint Motion to Exclude Plaintiffs' Designated Expert Michael K. Napier and Brief in Support (Doc. 265)
- Defendants' Joint Motion to Exclude Plaintiffs' Designated Expert William J. Vigilante, Jr. and Brief in Support (Doc. 266)
- Defendant Dhafer Awad's Motion for Summary Judgment and Brief in Support (Doc. 267)
- Defendant Shamrock Foods Company's Motion for Summary Judgment and Brief in Support (Doc. 268).

¹ Defendants object to any such jury instruction.

It is Defendants' position that each of the above motions (Docs. 263-268) should be granted. This matter should not proceed to a trial because Defendants are entitled to summary judgment.

To the extent any aspect of the case proceeds beyond summary judgment, Plaintiffs' experts William Reece, Stephanie Wick, Michael K. Napier, and William J. Vigilante, Jr. should be excluded as explained in the motions to exclude (Docs. 263-266).

In addition, Shamrock and Awad intend to file motions *in limine* as permitted by Court's scheduling order, as revised. Defendants incorporate their motions and the authorities cited therein here by reference. The Court should grant Defendants' *motions in limine* and exclude the evidence at issue in those motions.

Defendants also intend to move to bifurcate any trial in this matter into a liability phase and a damages phase, which would occur only if a jury finds liability in the liability phase. If the matter proceeds to a damages phase, Defendants contend that the Court must exclude certain evidence that Plaintiffs may offer as to punitive damages under Title 23, Section 9.1 of the Oklahoma Statutes. That statute is unconstitutional because it violates the due process clause of the Fourteenth Amendment of the United States Constitution by requiring the jury to focus on "harm to others" and this Court should not admit evidence that violates the due process clause.²

4. CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT.

A. Plaintiffs:

Plaintiffs contend the collision and the resulting damages, including the deaths of Rebecca Fulcher and Leah Ratley, were proximately caused by Defendants' negligence and recklessness as evidenced by the following:

- Defendant Awad's negligence per se in violating Oklahoma law and sections of the Federal Motor Carrier Safety Regulations ("FMCSRs").
- Defendant Awad's negligence in parking his semi-tractor and trailer on the rumble strips located on the emergency shoulder of a 75 mph turnpike instead of locating parking off the turnpike in a safer area.
- Defendant Shamrock Foods Company's negligent entrustment of its tractor-trailer to Defendant Awad.

² Plaintiffs oppose any bifurcation of liability and damages and further assert that punitive damages are not unconstitutional.

- Defendant Shamrock's failure to preserve electronic data from its tractor-trailer driven by Defendant Awad.³
- Defendant's Shamrock's vicarious liability for Defendant Awad's negligence and recklessness.
- Defendant Shamrock's independent negligence in aiding and abetting and teaching Awad how to falsify his ELD/Hours of Service⁴

Plaintiffs' Damages or Relief Sought:

Damages or Relief Sought		Amount⁵⁶
1.	All damages available for wrongful death under the statutes of the state of Oklahoma.	To be determined by the Jury. Estimated to be in excess of \$75,000.00.
2.	Punitive Damages Against Both Defendants	To be determined by the Jury. Estimated to be in excess of \$75,000.00.

³ Defendants object to all of Plaintiffs' contentions because Plaintiffs' claims fail as a matter of law for the reasons set forth in Defendants' pending motions for summary judgment. In addition, Defendants object to Plaintiffs' inclusion of this particular "contention" because this alleged failure to preserve data is not a cause of action.

Plaintiffs' response is that it is a contention, as titled above. Plaintiffs are entitled to a spoliation instruction due to Defendants' failure to preserve and/or produce electronic evidence from the Omnitrac XRS system installed on Awad's truck. Defendants knew of their obligation to preserve such information and their failure to preserve and/or produce the same warrants a spoliation instruction. Plaintiffs will file the appropriate motion seeking this relief. Defendants object to such a requested jury instruction.

⁴ Defendants' object to this "contention." The only direct claim against Shamrock is negligent entrustment. All other claims have been dismissed. *See* Order (Doc. 90).

⁵ Defendants object to the "amount" sought by Plaintiffs. Plaintiffs waived economic damages and are precluded from: (1) introducing specific pecuniary evidence concerning the severity of their emotional pain and suffering or mental anguish, (2) requesting a specific amount from the jury and (3) from using expert testimony to support their claims for non-economic damages. *See* Transcript of Motions Hearing, September 25, 2020, pp. 5-6, 8, 12.

⁶ Plaintiffs dispute Defendants' contention that they are precluded from offering expert testimony in support of their claims for non-economic damages-Plaintiffs agreed that a specific amount of damages would not be mentioned to the jury.

3.	Actual damages for Plaintiffs Ryan Fulcher and Leah Ratley for their pain and suffering, physical and mental.	To be determined by the Jury. Estimated to be in excess of \$75,000.00.
4.	Plaintiffs seek pre-judgment and post-judgment interest, all recoverable costs and expenses.	To be determined by the Court.

B. Defendants: Plaintiffs traveled from their homes in Wichita, Kansas to Tulsa, Oklahoma on the morning of April 4, 2017, to shop and attend a concert later that evening. They originally planned on spending the night in Tulsa. Tragically, Plaintiffs decided late that night, after the concert, to forego the hotel stay and drive home that night. Plaintiffs agreed that Ryan Fulcher would drive to the approximate halfway point of the trip back to Wichita and that Leah Ratley would take over driving at that point for the remainder of the trip. The Group planned to switch drivers due to the lateness of the hour, and the propensity for Ryan Fulcher to be tired. While driving home, Ryan Fulcher was fatigued. He knew that he was fatigued but consciously decided to continue driving. Ryan Fulcher ultimately fell asleep and drove the van into the rear of the parked tractor-trailer, which was parked completely off the roadway with its hazard lights on. Defendants contend Ryan Fulcher operated the vehicle in reckless disregard for the safety of the passengers in the automobile he was driving. Further, Plaintiffs, having originally planned to spend the night in a hotel, knew and appreciated the danger that the driver could fall asleep at wheel if they attempted to drive home late that night. The state of Oklahoma charged Ryan Fulcher with two counts of negligent homicide for his reckless conduct; Ryan Fulcher plead no contest to such charges. Defendants contend the gross negligence of Ryan Fulcher was the direct and proximate cause of Plaintiffs' damages.

Defendants specifically object to all claims and allegations of negligence by Plaintiffs. Plaintiffs' claims and allegations are not supported by admissible evidence.

Defendants' actions and/or omissions were not the cause of the accident.

Ryan Fulcher was negligent in the operation of the van, and his negligence proximately caused the accident, decedents' deaths, and Plaintiffs' claimed injuries and damages.

Plaintiffs' negligence is comparatively greater than Defendants' negligence, if any; therefore, Plaintiffs' recovery should be barred or reduced.

Plaintiffs' alleged damages are not a reasonable and necessary result of the subject accident.

Defendant Shamrock cannot be found liable for negligent entrustment if a jury finds Defendant Awad's actions and/or omissions were not the proximate cause of the accident.

Neither Awad nor Shamrock engaged in conduct sufficient to support plaintiffs' claim for punitive damages. Additionally, Oklahoma's punitive damages statute is unconstitutional.

Defendants request costs and expenses in litigation as permitted by law.

5. EXHIBITS. The following exclusionary language **MUST** be included:

Unlisted exhibits will not be admitted unless, by order of the court, the final pretrial order is amended to include them.

A. Plaintiffs⁷

(premarked for trial and exchanged as required under LCvR 39.4(a))

<u>No.</u>	<u>DESCRIPTION</u>	<u>OBJECTION AND RULE RELIED UPON</u>
1.	Diagram from the Official Oklahoma Crash Report (Shamrock 464)	
2.	Eight (8) dash camera videos from Oklahoma Highway Patrol	Relevance – FRE 401 Prejudice – FRE 403 Authentication – FRE 901
3.	Forty-three (43) photographs taken by Oklahoma Highway Patrol of the scene	Relevance – FRE 401 Prejudice – FRE 403 Authentication – FRE 901

⁷ Defendants object to each of Plaintiffs' exhibits as Plaintiffs have failed to separately identify the exhibits they expect to offer and those they may offer if the need arises. Fed. R. Civ. P. 26(a)(3)(A)(iii). Defendants further object to each of Plaintiffs' exhibits because Plaintiffs have failed to exchange or exhibit these premarked exhibits to Defendants. Defendants assert objections below based on what they anticipate the exhibits to be. To be clear, Defendants have not received documents that have been marked as exhibits from Plaintiffs—despite repeated requests for same. Further, some of these “exhibits” were identified for the first time on November 21, 2022. Defendants reserve the right to assert objections to each exhibit until they have received a premarked copy of same. Plaintiffs' response is that the requirement of what will be used and may be used is part of the initial disclosures, not for PTCO purposes. As for the exhibits, each exhibit has been exhibited to Defendants long ago and most are exhibits that Defendants produced and it is not possible to number the same until the PTCO is finalized.

4.	Twenty-one (21) photographs of the van from Ratley family	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Authentication – FRE 901
5.	Seventy-five (75) photographs of Laura Ratley	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
6.	Medical records from Perry Ambulance Service for Leah Ratley	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
7.	Medical records from Stillwater Medical Center for Leah Ratley	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
8.	Defendants' Discovery Responses	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901 Personal Data Identifiers
9.	Medical records from Perry Ambulance Service for Ryan Fulcher	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
10.	Medical records from Stillwater Medical Center for Ryan Fulcher	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
11.	Bosch Air Bag Control Module Report on Fulcher's vehicle	
12.	Ponca City weather report	
13.	Fulcher Vehicle Registration	
14.	Driver Vehicle Exam Report – Awad	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
15.	Oklahoma Highway Patrol Diagram	
16.	Driving Record – Awad	
17.	Driving Record – Rebecca Fulcher	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
18.	Driving Record – Leah Ratley	Relevance – FRE 401 Hearsay – FRE 801, 802

		Authentication – FRE 901
19.	Scene Diagrams	
20.	Next of Kin Notified Email	
21.	Michelle Beach Expert Witness Report and Diagrams	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901 Cumulative – FRE 403
22.	Michelle Beach CV	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
23.	William J. Vigilante, Jr., PhD, CPE, expert report and curriculum vitae	Hearsay – FRE 801, 802 Authentication – FRE 901 Inadmissible – FRE 702
24.	Michael K. Napier, Sr., expert report and curriculum vitae	Hearsay – FRE 801, 802 Relevance – FRE 401 Prejudice – FRE 403 Authentication – FRE 901 Inadmissible – FRE 702
25.	Stephanie L. Wick, PhD, LCMFT, LCAC, expert report and curriculum vitae	Hearsay – FRE 801, 802 Authentication – FRE 901 Inadmissible – FRE 702
26.	William Reece, expert report and curriculum vitae	Hearsay – FRE 801, 802 Authentication – FRE 901 Inadmissible – FRE 702
27.	Driver's Log 4/10/20 Shamrock 001- 192	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
28.	Dhafer Awad Personnel File and Policies and Procedures Shamrock 193 - 249	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901 Personal Data Identifiers
29.	Scene Photos Next Day Shamrock 253- 293	
30.	Accident Photos Shamrock 294- 309	
31.	4-10-2017 Email and attachment from Rita Young re: Shamrock Foods	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802

	Company SOP Emergency Roadside Parking Final policy	Authentication – FRE 901 Subsequent Remedial Measure – FRE 407
32.	OHP Troop YA Report Shamrock 484-491	
33.	Photo of Accident Shamrock 550	
34.	4-8-17 email from Awad to Karri Ryan re: speeding ticket	Relevance – FRE 401 Hearsay – FRE 801, 802 Prejudice – FRE 403 Authentication – FRE 901
35.	1-21-2017 @ 11:30 an email from Karri Ryan to Awad re: Getting Awad and Azhar back together as a	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
36.	1-21-2017 Awad email at 11:34 am responding to Karri Ryan's 11:30 am email	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
37.	1-21-2017 Karri Ryan email at 7:13 am to Awad re: covering a load	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
38.	1-21-2017 Awad email to Karri Ryan @ 11:23 am re: He will cover the load	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
39.	12-29-2016 Karri Ryan email to Awad re: Speeding in CA	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
40.	12-20-2016 @ 1:42 pm Karri Ryan email to all drivers re: Contact HQ if any violations occur 24/7	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
41.	11-30-2016 Karri Ryan email @ 9:01 am re: walk to the location instead of logging in for the day	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
42.	11-30-2016 Awad email to Karri Ryan @ 9:01 am re:	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802

	agreeing to walk so he does not begin his Hours of Service	Authentication – FRE 901
43.	11-23-2016 Karri Ryan email to Awad @ 4:35 am re: Trip to Virginia	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
44.	11-23-2016 Awad email to Karri Ryan @ 9:47 am re: agreeing	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
45.	11-22-2016 Karri Ryan email to Awad @ 3:29 pm re: log off duty when he stops as much as possible.	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
46.	11-7-2016 Rita Young email to Dairy Drivers @ 9:57 am re: 1 st Safety Meeting and quarterly meetings thereafter	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
47.	11-1-2016 Karri Ryan email to Awad @ 10:41 am re: do not log in to check in for shipment pickup at Trademark	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
48.	9-8-2016 Ludlow email to all Dairy Drivers @ 11:25 am re: jack assigned	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
49.	9-1-2016 Karri Ryan email to Azhar @ 3:59 pm re: next load and Awad training and driving	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
50.	3-20-2017 Karri Ryan email to Awad @ 4:28 pm and Awad response at 3:34 pm re: log out of XRS completely	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
51.	3-15-2017 Valenzuela email to Awad @ 9:59 am re: late issues on 3-14-2017	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
52.	10-14-2017 Awad read receipt to Karri Ryan @ 3:47 pm re: APUs running in Yard	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901

53.	10-12-2017 Awad email to Karri Ryan @ 8:05 pm re: next load	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
54.	4-1-2017 Karri Ryan email to Awad @ 10:03 am re: go off duty when fueling	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
55.	3-29-17 through 4-1-2017 email exchange between Karri Ryan and Awad re: Awad running out of hours of service	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
56.	2-8-2017 Karri Ryan email to Awad @ 9:15 am with Awad response @ 10:35 am re: money on card	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
57.	1-27-2017 Awad email to Valenzuela @ 2:07 pm re: Next Load	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
58.	2-13-2017 DriversAlert.com email to Awad re: online training	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
59.	1-27-2017 Awad email response @ 2:07 pm to Valenzuela email at 12:19 pm re: next load	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
60.	4-6-2017 Memo from Rita Young to Drivers re: Certification of Violation	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
61.	Dhafer Awad New Hire Documents, Repair Order Detail Shamrock 805-888	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901 Personal Data Identifiers
62.	OHP Vehicle Examination Report dated 4-5-17 Shamrock 889-890	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
63.	Accident Points Shamrock 891	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802

		Authentication – FRE 901
64.	Dhafer Awad 8-29-16 No Break Shamrock 892	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
65.	Dhafer Awad 12-13-16 No 2 nd Break Shamrock 893	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
66.	Dhafer Awad 12-20-16 No pre trip Shamrock 894	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
67.	Discipline Speeding 12/29/16 Shamrock 895-896	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
68.	2 nd Oral Warning – 11 Hour Shamrock 897	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
69.	Oral Warning – 14 Hour Shamrock 898	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
70.	Truck Photos Shamrock 899-923	Relevance – FRE 401 Cumulative – FRE 403 Authentication – FRE 901
71.	Pre-trip and Post Trip Inspection Forms Shamrock 924-1000	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
72.	David Ford Training Shamrock 1001	
73.	Manually- Dairy 2010 Shamrock 1002-1019	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
74.	Notes Shamrock 1021	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
75.	Personnel File Documents of Dhafer Mohammed Awad Shamrock 1022-1073	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901 Personal Data Identifiers
76.	Registration Shamrock 1074	Relevance – FRE 401 Hearsay – FRE 801, 802

		Authentication – FRE 901
77.	Registration Shamrock 1075-1076	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
78.	Organization Chart Shamrock 1077	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
79.	Dhafer Awad Paysheet 3/26/17-4/1/17 Shamrock 1078- 1079	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
80.	Dhafer Awad Paysheet Shamrock 1080	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
81.	Trip Fuel 3/30/17 Shamrock 1081 - 1083	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
82.	Trip Pack 3/30/17 Shamrock 1084-1091	
83.	Dhafer Awad CC Usage Shamrock 1095-1100	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
84.	Quarterly Safety Meeting December 2016 Shamrock 1101-1110	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
85.	Quarterly Safety Meeting July 2016 Shamrock 1111-1143	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
86.	Quarterly Safety Meeting March 2016 Shamrock 1144 -1163	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
87.	Quarterly Safety Meeting Poster Shamrock 1164	Relevance – FRE 401 Prejudice – FRE 403

		Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
88.	Quarterly Safety Meeting Posting Shamrock 1165	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
89.	Quarterly Safety Meeting Today Shamrock 1166	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
90.	Robs Safety Shamrock 1167-1168	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
91.	Safety Meeting 3/11/15 Shamrock 1169-1170	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
92.	Safety Meeting 3/19/15 Shamrock 1171-1172	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
93.	Safety Meeting 3/26/15 Shamrock 1173	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
94.	Safety meeting 4/1/15 Shamrock 1174	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
95.	Weekly Safety Meetings Shamrock 1175-1176	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901

96.	Dhafer Awad Accident Review Shamrock 1177-1178	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
97.	Dhafer Awad Separation Agreement Shamrock 1179 - 1186	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
98.	Dhafer Awad Driver's License Shamrock 1187	Personal Data Identifiers
99.	Bob Ratley Facebook Message Shamrock 1188	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
100.	Dhafer Awad Earning Statements Shamrock 1189-1207	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
101.	Motor Vehicle Accident Register Shamrock 1208-1210	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
102.	Safety Meeting 4/15/15 Shamrock 1211	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
103.	Revised Carrier Load Tender Reports Shamrock 1212-1284	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
104.	Registration, Penske Reports, Emails Shamrock 1285- 1340	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
105.	Emails Shamrock 1341	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403

		Hearsay – FRE 801, 802 Authentication – FRE 901
106.	United Truck Driving School Certificate Shamrock 1342	
107.	Safety One Point Lesson Shamrock 1343-1348	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
108.	Leslie Smart Communication Shamrock 1349-1386	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901
109.	Photographs Shamrock 1387-1394	Relevance – FRE 401 Hearsay – FRE 801, 802 Confusion – FRE 403 Authentication – FRE 901
110.	3-2-17 @ 1:18 pm email to Awad from Miranda Valenzuela re: 14 & 11 hour violation	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
111.	3-2-17 @ 11:46 am email to Awad from Karri Ryan re: Hours of Service remaining	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
112.	Shamrock Safety Policy dated 3-1-2017 Shamrock 1654-1657	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
113.	Credit Card Usage Log Shamrock 1095-1100	Relevance – FRE 401 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
114.	Emails regarding documents needed for Awad's truck post- crash Shamrock 1285-1289	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
115.	Summary of Voluminous Documents-Awad driver training	Relevance – FRE 401 Prejudice – FRE 403 Cumulative – FRE 403

		Hearsay – FRE 801, 802 Authentication – FRE 901
116.	Stratton, Moore & Painter Invoices Shamrock 1499-1512	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
117.	Les Smart Invoices and time sheets Shamrock 1353-1362 & 1382	Relevance – FRE 401 Hearsay – FRE 801, 802 Authentication – FRE 901 Prejudice – FRE 403
118.	Exhibit 3 from Phillip Harris Deposition, Transcript of Awad from United Truck and Car Driving School, Inc.	Relevance – FRE 401 Prejudice – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
119.	All deposition transcripts, exhibit to depositions, and documents attached to depositions to which Defendant does not object.	Objections reserved until identification of specific document(s).
120.	All demonstrative exhibits to be used by any factual or expert witness.	Objections reserved until identification of specific document(s).
121.	All exhibits identified and/or listed by any other party to this litigation.	Objections reserved until identification of specific document(s).
122.	Google Earth Images of the scene and other parking areas available to Defendant Awad	Objections reserved until identification of specific document(s).
123.	Exhibit 27 from Mark D’Andrea Deposition, Awad Driving Spreadsheet and ELD Reports	Relevance – FRE 401 Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
124.	Relevant Portions of Documents Produced by Defendants.	
125.	Any Necessary Authentication or Identification Documents.	
126.	Any Necessary Rebuttal Exhibits.	Objections reserved until identification of specific document(s).

B. Defendants:

(premarked for trial and exchanged as required under LCvR 39.4(a))

Exhibits Defendants Expect to Offer:

<u>No.</u>	<u>Bates No.</u>	<u>Description</u>	OBJECTION AND RULE RELIED UPON
2.	SFC 190	Driver's Log April 4, 2017	None
3.	SFC 193-249	Awad's DQ File	None
4.	SFC 205-206	Awad's Road Test	None
5.	SFC 215	Awad's CDL	None
6.	SFC 246	Shamrock Log Violation Policy	None
7.	SFC 250	Awad's cell phone video	Irrelevant – FRE 402; Prejudicial – FRE 403
8.	SFC 251	Awad's cell phone video	Irrelevant - FRE 402; Prejudicial – FRE 403
9.	SFC 252	Awad's cell phone video	Irrelevant - FRE 402; Prejudicial – FRE 403
10.	SFC 534	Supplemental Report Ben Treiner Statement	None
11.	SFC 805-806	Awad Offer Letter 7-8-2016	None
14.	SFC 899-923	Photographs of Accident	None
15.	SFC 1001	David Ford Invoice	None
18.	SFC 1084-1091	Awad's Trip Pack March 30, 2017	None
19.	SFC 1342	Certificate from United Truck Driving School	None
21.	SFC 1543-1626	Awad's Personnel File	None
23.	IMG_4688 IMG_4689 IMG_4690 IMG_4691	Photographs Oklahoma Highway Patrol	None

	IMG 4694		
24.		Affidavit of Trooper Punneo November 1, 2017; CM-17-111; Noble County, Oklahoma	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice and Confusion– FRE 403 Impeachment – FRE 609 Hearsay – FRE 802
25.		Amended Information; CM-17-111; Noble County, Oklahoma	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion – FRE 403 Impeachment – FRE 609 Hearsay – FRE 802
26.		Deferment CM-17-111; Noble County, Oklahoma	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion – FRE 403 Impeachment – FRE 609 Hearsay – FRE 802
27.		Cimarron Turnpike Average Daily Traffic 12/31/17	None
28.		Google Maps Hutchinson KS to Wichita KS	None
29.		Google Maps Wichita, KS to Tulsa, OK	None
30.		Expert Report Leslie A. Smart October 1, 2021	Remainder of Related Writings-FRE 106 Prejudice, Confusion & Cumulative– FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
31.		Supplemental Expert Report Leslie A. Smart March 8, 2022	Remainder of Related Writings – FRE 106 Prejudice, Confusion & Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
32.		October 1, 2021 Expert Report	Remainder of Related Writings – FRE 106

		Stratton, Moore & Painter, Inc.	Prejudice, Confusion & Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
33.		March 14, 2022 Supplemental Expert Report Stratton, Moore & Painter, Inc.	Remainder of Related Writings – FRE 106 Prejudice, Confusion & Cumulative – FRE 403 Hearsay – FRE 801, 802 Authentication – FRE 901
34.		Animation of Subject Accident Stratton, Moore & Painter, Inc.	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice, Confusion, Misleading & Cumulative – FRE 403 Authentication – FRE 901
35.	RF 15-62	Bosch Crash Data Retrieval	None
36.	RF 93-98	Official Oklahoma Traffic Collision Report	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802
37.	RF 117-121	Oklahoma Highway Patrol Supplemental Report	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice – FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
38.	RF 99-102	Weather History KPNC – April 2017	None
39.	RF 103-105	Oklahoma Highway Patrol Photographic Log	Inadmissible – FRE 402 & 410 Prejudice – FRE 403 (contains a case number)
40.	RF 75-83	Oklahoma Highway Patrol Report of Investigation	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
41.	RF 129-133 135-139 146-156	Oklahoma Highway Patrol Photographs	None

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51.		IME – Amy Ratley	Remainder of Related Writings – FRE 106 Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802
52.		IME – Robert Ratley	Remainder of Related Writings – FRE 106 Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802
53.		IME – Leah Hiebert	Remainder of Related Writings-FRE 106 Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802
54.		IME – John Fulcher	Remainder of Related Writings – FRE 106 Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802
55.		IME – Amy Fulcher	Remainder of Related Writings – FRE 106 Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802
56.		IME – Ryan Fulcher	Remainder of Related Writings – FRE 106 Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion & Cumulative – FRE 403 Hearsay – FRE 802

57.	SFC 453-549	OHP Report	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
59.	RF 9-10	Booking Sheet Ryan Fulcher	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
60.	RF 63	Criminalistics Examination Report D. Awad	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Hearsay – FRE 802901
61.	RF 64	Criminalistics Examination Report R. Fulcher	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
62.	RF 87-89	Motor Vehicle Death Supplement	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
63.	RF 117-121	OHP Supplemental Form	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
64.	RF 75-83	OHP Report Investigation	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
65.	SFC 1187	Awad CDL Driver's License	None
66.	SFC 1022-1073	Docs Given to Awad	None
71.		Demonstrative exhibits	All objections reserved until produced.

Exhibits Defendants May Offer if the Need Arises:

<u>No.</u>	<u>Bates No.</u>	<u>Description</u>	OBJECTION AND RULE RELIED UPON
12.	SFC 865-884	New Hire Orientation	None
13.	SFC 889-890	Driver/Vehicle Examination Report	None
17.	SFC 1022-1023	Delivery Driver Job Description	None
20.	SFC 1343-1348	Awad Training Docs	None
22.	SFC 1654-1667	Shamrock Safety Policy 3.01.17	None
42.		Portions of OHP Dash Cam Videos (4)	All objections reserved until produced,
43.	State Farm 61, 72, 223-224, 288	Documents Produced by State Farm	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
44.	USAA 28, 139, 148- 158, 160- 161, 186- 192	Documents Produced by USAA	Relevance – FRE 401 Inadmissible – FRE 402 & 410 Prejudice & Confusion– FRE 403 Liability Insurance – FRE 411 Hearsay – FRE 802
45.		John Fulcher Medical Records	All objections reserved until specifically identified and produced
45.1	MR 1	Adult, Child and Family Counseling	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
45.2	MR 2-3	Adult, Child and Family Counseling	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
45.3	MR 43	Haus of Clarity	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
46.	MR 283-295	Amy Fulcher Medical Records	All objections reserved until specifically identified and produced

47.		Ryan Fulcher Medical Records	All objections reserved until specifically identified and produced
47.1	MR 4-14	Client Centered Counseling	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
47.2	MR 5582-5590	John Theis	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
48.		Amy Ratley Medical Records	All objections reserved until specifically identified and produced
48.1	MR 17-42	Creekside Therapy	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
48.2	MR 437-813	Horizons Mental Health Center	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
48.3		2021 Records Creekside Therapy Services	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
48.4		2022 Records Creekside Therapy Services	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
48.5		Horizons Mental Health Center	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
49.		Robert Ratley Medical Records	All objections reserved until specifically identified and produced
49.1	MR 814-863	Horizons Mental Health Center	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
49.2	MR 5576-5579	Jan Rogers	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802

49.3	MR 6141-6155	Prairie Star Health Center	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
50.		Leah Ratley Medical Records	All objections reserved until specifically identified and produced
50.1	MR 337-436		Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
50.2	MR 6702-6710		Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
50.3		Horizons Mental Health Center	Relevance – FRE 401 Inadmissible – FRE 402 Prejudice & Confusion– FRE 403 Hearsay – FRE 802
67.		All documents obtained via subpoenas duces tecum in this action	All objections reserved until specifically identified and produced
68.		All documents exchanged by the parties in discovery	All objections reserved until specifically identified and produced
69.		All deposition exhibits	All objections reserved until specifically identified and produced
70.		All exhibits of all other parties, except for those objected to by Defendants	All objections reserved until specifically identified and produced
71.		All demonstrative exhibits	All objections reserved until specifically identified and produced
71.1		Reflective Triangles	All objections reserved until specifically identified and produced

6. WITNESSES: The following exclusionary language **MUST** be included:

Unlisted witnesses will not be admitted unless, by order of the court, the final pretrial order is amended to include them.

A. Plaintiff:⁸⁹

No.	Name	Address	Anticipated Testimony
1.	Dhafer Awad	c/o counsel of record	Deposed.
2.	Ryan Fulcher	c/o counsel of record	Deposed.
3.	Amy Fulcher	c/o counsel of record	Deposed.
4.	John Fulcher	c/o counsel of record	Deposed
5.	Amy Ratley	c/o counsel of record	Deposed.
6.	Robert Ratley	c/o counsel of record	Deposed.
7.	Leah Ratley	c/o counsel of record	Deposed.
8.	Trooper Shane Newell	Oklahoma Highway Patrol 3600 North MLK Blvd. Oklahoma City, OK 73136	Deposed
9.	Trooper Todd Punneo	Oklahoma Highway Patrol 3600 North MLK Blvd. Oklahoma City, OK 73136	Deposed
10.	Trooper Matthew Ledbetter	Oklahoma Highway Patrol 3600 North MLK Blvd. Oklahoma City, OK 73136	Facts and circumstances surrounding the wreck
11.	Ethan Winter	612 Union Park Circle Colwich KS 67030	Deposed
12.	Stephanie Atterberry	707 West 13 Street North #1 Wichita, KS 67203	Testimony as to Amy, John and Rebecca Fulcher
13.	India Brown	2363 Chapel Ridge Place Salina, KS 67401	Testimony as to Amy, John and Rebecca Fulcher
14.	Andrea Reed	406 North Pershing Wichita, KSs 67208	Testimony as to Amy, John and Rebecca

⁸ Defendants object to each of Plaintiffs' witnesses as Plaintiffs have failed to separately identify the witnesses whom they expect to present and those whom they may call if the need arises. Fed. R. Civ. P. 26(a)(3)(A)(i).

⁹ Plaintiffs read the cited rule to address pretrial disclosures, not the Pretrial Order itself.

			Fulcher
15.	Leslee Miller	400 South Grand McPherson, KS 67460	Testimony as to Amy, John and Rebecca Fulcher
16.	Gerald Miller	611 East Elizabeth McPherson, KS 67460	Testimony as to Amy, John and Rebecca Fulcher
17.	Chelsea Dyer	350 West Douglas Avenue Wichita, KS 67202	Deposed
18.	Jennifer Babcock	1521 Sunflower Drive McPherson, KS 67460	Testimony as to Amy, John and Rebecca Fulcher
19.	Alexis Ratley	3200 Garden Grove Parkway, Apt. 4A Hutchinson, KS 67502	Testimony regarding Amy, Leah, and Bob Ratley's damages.
20.	Otha Ratley	908 East 14 th Avenue Hutchinson, KS 67501	Testimony regarding Amy, Leah, and Bob Ratley's damages.
21.	Connie Casey	5510 East 69 th Hutchinson, KS 67502	Testimony regarding Bob Ratley's damages.
22.	Chris Wornkey	1107 West 32 nd Hutchinson, KS 67502	Testimony regarding Bob Ratley's damages.
23.	Simon Hiebert	3420 North Elm Street Hutchinson, KS 67502	Deposed
24.	Les Smart	10023 East 61 st Street Bixby, OK 74008	Deposed
25.	Michelle Beach	1594 E. State Highway CC Pleasant Hope, MO 65725	Deposed
26.	Michael K. Napier, Sr.	530 Forest Hill Road Macon, GA 31210	Deposed
27.	William J. Vigilante, Jr., PhD, CPE	200 Pembroke Circle Phoenixville, PA 19460	Deposed
28.	Dr. Stephanie L. Wick, PhD, LCMFT, LCAC	Andrews & Associates Counseling 1506 Browning Place Suite 107 Manhattan, KS 66502	Deposed
29.	William Reece	21235 West 8 th Street South	Deposed

		Sand Springs, OK 74063	
30.	Mark D'Andrea	c/o counsel for Shamrock	Deposed
31.	John Brannigan	c/o counsel for Shamrock	Deposed
32.	Rita Young	c/o counsel for Shamrock	Deposed
33.	Karri Ryan	c/o counsel for Shamrock	Deposed
34.	Brad Peppers	c/o counsel for Shamrock	Deposed
35.	Branch Mueller	c/o counsel for Shamrock	Deposed
36.	Rene Ludlow	c/o counsel for Shamrock	Deposed
37.	Karen Williams	c/o counsel for Shamrock	Deposed
38.	Janaya Harris	1128 Gamett Circle Mesa, AZ	Deposed
39.	Dale Aurigemma	c/o counsel for Shamrock	Deposed
40.	Bob Painter	Post Office Box 7458 Moore, OK 73153	Deposed
41.	Phillip C. Harris United Truck Driving School Representative	2525 Camino Del Rio South #255 San Diego, California 92108	Deposed
42.	Azhar Mnawer	St. Louis	Deposed
43.	Joe Ohr	Omnitracs	Deposed
44.	David Ford	42312 North 9 th Avenue Phoenix, AZ 85086	Deposed
45.	Any necessary rebuttal witnesses		
46.	All witnesses listed by Defendants to which Plaintiffs do not object.		

B. Defendants:***Witnesses That Defendants Expect To Present:***

No.	Name	Proposed Testimony
1.	Dhafer M. Awad CROWE & DUNLEVY, P.C. c/o Chris Davis 500 Kennedy Building 321 South Boston Avenue Tulsa, OK 74103 918 592 9890 918 599 6337 facsimile	Defendants anticipate that Mr. Awad will testify regarding all issues involved in this matter, including, his education, experience, and training as an OTR driver, and the facts and circumstances of the subject accident. Defendants also anticipate this witness to testify concerning relevant matters raised during his deposition in this matter.
2.	Shane Newell PO Box 158 Morrison OK 73061 (580) 336 9880 Shane.newell@dkps.ok.gov	Defendants anticipate that Mr. Newell will testify regarding his post collision observations and/or investigation. Defendants also anticipate this witness to testify concerning relevant matters raised during his deposition in this matter.
3.	Todd Punneo PO Box 158 Morrison OK 73061 (580) 336 9880 Todd.punneo@dps.ok.gov	Defendants anticipate that Mr. Punneo will testify regarding his post collision observations and/or investigation. Defendants also anticipate this witness to testify concerning relevant matters raised during his deposition in this matter.
4.	Ben Treiner 732 Delaware Perry, OK 73077 (580) 336 9755	Defendants anticipate that Mr. Treiner will testify regarding his post collision observations and/or investigation. Defendants also anticipate this witness to testify concerning relevant matters raised during his deposition in this matter.
5.	Branch Mueller	Defendants anticipate that Mr. Mueller, as Shamrock's former risk management and safety director, will testify regarding relevant hiring, training, supervision, safety, and compliance procedures, and Mr. Awad's driving record. Defendants also anticipate this witness to testify concerning relevant matters raised during his deposition in this matter.
6.	Brad Peppers Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Defendants anticipate that Mr. Peppers, as Shamrock's enterprise fleet manager, will testify regarding relevant driver hiring, training, supervision, safety, and compliance procedures, and Mr. Awad's driving record. Defendants also anticipate this witness to testify concerning

		relevant matters raised during his deposition in this matter.
7.	Rita Young Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Defendants anticipate that Ms. Young, as Shamrock's Transportation Supervisor, will testify regarding relevant driver hiring, training, supervision, safety, and compliance procedures, and Mr. Awad's driving record. Defendants also anticipate this witness to testify concerning relevant matters raised during her deposition in this matter.
8.	George D. Santos, MD Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Expert Witness. Dr. Santos conducted medical psychiatric examinations of Robert Ratley, Amy Ratley, Leah Ratley, John Fulcher, Amy Fulcher, and Ryan Fulcher. His expert opinion is set forth in the IMEs that he prepared. Dr. Santos will testify regarding his independent medical examinations of Robert Ratley, Amy Ratley, Leah Ratley, John Fulcher, Amy Fulcher, and Ryan Fulcher and the expert opinions disclosed after those examinations.
9.	Stratton, Moore & Painter, Inc. Robert W. Painter, Jr. Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Expert Witness. Stratton, Moore & Painter, Inc. investigated and reconstructed the collision at issue. Its expert opinion is set forth in its Expert Witness Report, which has been served upon counsel of record. Stratton, Moore & Painter, Inc. has also prepared a computer-generated animation of the subject accident to illustrate and explain its testimony and opinions. Mr. Painter will testify about the matters set forth in the Expert Witness Report of Stratton, Moore & Painter and relevant matters raised during his deposition in this case.
10.	Smart Fleet Management LLC Leslie "Les" A. Smart Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Expert Witness. Smart Fleet Management LLC is a contract fleet consultant; it assists senior management, ownership, and private equity on fleet/risk management. Its expert opinion is set forth in its Expert Witness Reports, which have been served upon counsel of record. Mr. Smart will testify about the matters set forth in the Expert Witness Report of Smart Fleet Management, LLC and relevant matters raised during his deposition in this case.

Witnesses That Defendants May Call If The Need Arises:

No.	Name	Proposed Testimony
11.	Ryan Fulcher c/o Michael D. Denton 925 W. State Highway 152 Mustang, OK 73064 (405) 376-2212 (405) 376-2262-facsimile	Defendants anticipate that Mr. Fulcher will testify regarding the facts and circumstance of the subject accident, his injuries, medical treatment, and his plea of nolo contendere to negligent homicide after the subject accident. Defendants also anticipate this witness to testify concerning other matters raised during his deposition in this matter.
12.	Leah Ratley c/o Matthew L. Bretz 3 Compound Drive PO Box 1782 Hutchinson, KS 67504-1782 (620) 662-3435 (620) 3445 facsimile	Defendants anticipate that Ms. Ratley will testify regarding her mental health prior to the accident, the facts and circumstance of the subject accident, her injuries, medical treatment, and her claim for insurance benefits against Mr. Fulcher's liability insurance carrier. Defendants also anticipate this witness to testify concerning other matters raised during her deposition in this matter.
13.	Robert Ratley c/o Matthew L. Bretz 3 Compound Drive PO Box 1782 Hutchinson, KS 67504-1782 (620) 662-3435 (620) 3445 facsimile	Defendants anticipate that Mr. Ratley will testify regarding his mental health prior to the accident, his relationship with his daughters, the facts and circumstance of the subject accident, his injuries, medical treatment, and his claim for insurance benefits against Mr. Fulcher's liability insurance carrier. Defendants also anticipate this witness to testify concerning other matters raised during his deposition in this matter.
14.	Amy Ratley c/o Matthew L. Bretz 3 Compound Drive PO Box 1782 Hutchinson, KS 67504-1782 (620) 662-3435 (620) 3445 facsimile	Defendants anticipate that Ms. Ratley will testify regarding her mental health prior to the accident, her relationship with her daughters, the facts and circumstance of the subject accident, her injuries, medical treatment, and her claim for insurance benefits against Mr. Fulcher's liability insurance carrier. Defendants also anticipate this witness to testify concerning other matters raised during her deposition in this matter.
15.	John Fulcher c/o James V. Murray 311 South Duck Street P.O. Box 2224 Stillwater, Oklahoma 74074	Defendants anticipate that Mr. Fulcher will testify regarding his mental health prior to the accident, his relationship with his children, the facts and circumstance of the subject accident, his injuries, medical treatment, and his claim for

	(405) 377-7000 (405) 377-7009 facsimile	insurance benefits against Mr. Ryan Fulcher's liability insurance carrier. Defendants also anticipate this witness to testify concerning other matters raised during his deposition in this matter.
16.	Amy Fulcher c/o James V. Murray 311 South Duck Street P.O. Box 2224 Stillwater, Oklahoma 74074 (405) 377-7000 (405) 377-7009 facsimile	Defendants anticipate that Ms. Fulcher will testify regarding her mental health prior to the accident, her relationship with her children, the facts and circumstance of the subject accident, her injuries, medical treatment, and her claim for insurance benefits against Mr. Ryan Fulcher's liability insurance carrier. Defendants also anticipate this witness to testify concerning other matters raised during her deposition in this matter.
17.	Mark D'Andrea	Defendants anticipate that Mr. D'Andrea, as a former regional safety and compliance manager, will testify regarding relevant matters raised during his deposition in this case.
18.	John Brannigan	Defendants anticipate that Mr. Brannigan, as a former director of logistics, will testify regarding relevant matters raised during his deposition in this case.
19.	Karri Ryan Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Defendants anticipate that Ms. Ryan, as the OTR supervisor, will testify regarding Mr. Awad's driving record and relevant matters raised during her deposition in this case.
20.	Rene Ludlow Jones, Gotcher & Bogan, P.C. c/o James E. Weger 15 East Fifth Street, Ste. 3800 Tulsa, OK 74103-4309 (918) 581 8200 (918) 583 1189 facsimile	Defendants anticipate that Ms. Ludlow, as the OTR business training manager, will testify regarding Mr. Awad's driving record and relevant matters raised during her deposition in this case.
21.	David Ford 39719 N. 10t. St Phoenix Arizona 85086	Defendants anticipate that Mr. Ford will testify regarding the facts and circumstances of his training of Mr. Awad and his recommendation to Shamrock re: extending an offer of employment to Mr. Awad as an OTR driver. Mr. Ford will

		also testify regarding relevant matters raised during this deposition in this case.
22.	Azhar Mnawer 9941 Pointe South Dr., Apt. B St. Louis MO, 63128	Defendants anticipate that Mr. Mnawer will testify regarding the facts and circumstances of his training of Mr. Awad and his observations of Mr. Awad's ability as an OTR driver.
23.	All witnesses listed by any other party to this action, not objected to by Defendants	
24.	All witnesses necessary for authentication of documents	
25.	All witnesses necessary for rebuttal	

7. ESTIMATED TRIAL TIME:

A. Plaintiffs' Case: 3-4 days

B. Defendants' Case: 3-4 days

C. If you desire to have daily copy or any other extraordinary court reporter services during trial, you must so notify the Chief Deputy Court Clerk a minimum of two weeks before the date the case is scheduled to be called for trial.

8. BIFURCATION REQUESTED: Yes X¹⁰ No _____

Defendants request bifurcation; Plaintiffs object.

9. POSSIBILITY OF SETTLEMENT:Good _____ Fair _____ Poor x

¹⁰ Plaintiffs do NOT request bifurcation.

All parties approve this report and understand and agree that this report supersedes all pleadings, shall govern the conduct of the trial, and shall not be amended except by order of the court.

s/ Matthew L. Bretz
Counsel for Ratley Plaintiffs

s/ James V. Murray
Counsel for Fulcher Plaintiffs

s/ Michael D. Denton, Jr.
Counsel for Ryan Fulcher Plaintiff

s/ James E. Weger
Counsel for Defendant, Shamrock Foods Company

s/ Chris Davis
Counsel for Defendant, Dhafer Awad